

BUREAU OF LAW

MEMORANDUM

Corp. Tax Determinations
A-2
Garvey, P. J., Carting
and Storage, Inc.

TO: Commissioners Murphy, Palestin, Macduff

FROM: E. H. Best, Counsel

SUBJECT: Proposed Determinations:
Rochester Gas and Electric Corporation
P. J. Garvey Carting and Storage, Inc.
Boss-Linco Lines, Inc.

The issue raised herein is whether or not the distribution by the taxpayer of capital stock or exchange of stock under a plan of recapitalization of the taxpayer, resulting in either instance, in a transfer of amounts from earned surplus to capital, constitutes a dividend for franchise tax purposes under Section 186 of the Tax Law. (Rochester Gas and Electric Corporation), or Section 183 thereof, (P. J. Garvey Carting and Storage, Inc. and Boss-Linco Lines, Inc.)

During the periods under review, Rochester Gas and Electric Corporation and P. J. Garvey Carting and Storage, Inc. declared and issued stock dividends of shares of common stock and transferred sums of money from surplus to capital in connection with such issues. However, with respect to Boss-Linco Lines, Inc., the transfer of earned surplus to capital resulted from an exchange of stock under a plan of recapitalization of a total value of \$22,400 into other stock of a total value of \$317,500, the difference being transferred from earned surplus to capital.

I am of the opinion that distribution of stock dividends on the basis of a transfer of earned surplus to capital are dividends for franchise tax purposes under Sections 182, 183 and 186 of the Tax Law, in accordance with the opinions expressed by me in letters to the taxpayer's attorneys dated March 22, 1963, and February 9, 1965, copies of which letters are hereto attached. I am further of the opinion that the transfer from earned surplus to capital with respect to the plan of recapitalization in the matter of Boss-Linco Lines, Inc. also constitutes a dividend for franchise tax purposes. Accordingly, I am in agreement with the proposed determinations sustaining the imposition of additional franchise taxes.

Kindly return the files after disposition.

E. H. Best

Counsel

MS:lb
December 7, 1965 (Dec. 13, 1965)

STATE OF NEW YORK

THE STATE TAX COMMISSION

In the Matter of the Application

of

P. J. GARVEY CARTING & STORAGE, INC.

**for revision or refund of franchise
tax assessed under Section 183 of
Article 9 of the Tax Law for the tax
year begun January 1, 1963, based on
the operations of the calendar year
1962.**

**P. J. Garvey Carting & Storage, Inc., the taxpayer
herein, having filed application for revision or refund of
franchise tax assessed under Section 183 of Article 9 of the
Tax Law for the tax year begun January 1, 1963, and a hear-
ing having been held in connection therewith at the office
of the State Tax Commission in Albany on August 24, 1963,
before William F. Sullivan, Senior Tax Administrative Super-
visor of the Corporation Tax Bureau of the Department of
Taxation and Finance, at which hearing Albert P. Bolyden,
certified public accountant, and Ralph J. Gregg, Esq., of
Council, appeared personally and testified, and the record
having been duly examined and considered by the State Tax
Commission,**

It is hereby found:

**(1) That the taxpayer was incorporated under the
laws of New York on or about July 26, 1929;**

**(2) That on the basis of a report filed, a tax
was audited and stated as follows:**

Stock dividend	$\$74,800 = 400\% \times .00025\% = 100 \text{ Mills}$
Par Value Com. Stock	$\$18,700$
Rate	$\underline{100 \text{ Mills}}$
Tax	$\$ 1,870$

(3) That the tax was audited and stated on December 6, 1963 and application for revision or refund was filed on February 26, 1964;

(4) That pursuant to meeting of Board of Directors on November 12, 1962 the taxpayer declared a stock dividend of 748 shares of common stock and transferred \$74,800.00 from surplus to capital as capital representing said shares.

Upon the foregoing findings and upon all the evidence presented, it is hereby

DETERMINED:

(A) That the distribution by the taxpayer of its own capital stock, on the basis of a transfer from earned surplus of \$74,800.00 to capital, constitutes a dividend for franchise tax purposes under Section 183 of the Tax Law;

(B) That the tax as set forth in (2) above is affirmed as assessed;

(C) That the aforesaid tax does not include any tax or other charges which are not legally due.

Dated: Albany, New York

this 28th day of February, 1966.

THE STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

COMMISSIONER

/s/

IRA J. PALESTIN

COMMISSIONER

/s/

JAMES R. MACDUFF

COMMISSIONER